



John Elias Baldacci
Governor

Maine Department of Health and Human Services

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Acting Commissioner

James D. Bivins
Director

TO: Brenda M. Harvey, Acting Commissioner
Department of Health and Human Services
221 State Street
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ADMINISTRATIVE HEARING RECOMMENDATION

An administrative hearing was held on 12/29/05, beginning at 9:50 a.m., in the case of the Wayside Gardens Residential Care Facility, at Portland, Maine, before Ronald S. Stoodley, Hearing Officer. The Hearing Officer's jurisdiction was conferred by special appointment from the Commissioner, Department of Health and Human Services (DHHS).

CASE BACKGROUND AND ISSUE:

Wayside Gardens Residential Care Facility is a residential care unit within Springbrook Nursing Facility. Springbrook Nursing Facility is owned by Sandy River Health Systems. Wayside Gardens Residential Care Facility is generally referred to in this Recommendation as "Wayside Gardens."

DHHS conducted a Case Mix Review of Wayside Gardens on 2/19/04. DHHS reviewed the records of 8 residents of Wayside Gardens and determined that the records of 5 of those residents were in error, and determined that 62.5% of the records that it reviewed were in error, and determined that Wayside Gardens was subject to a 10% sanction. DHHS conveyed the results of its Case Mix Review to Wayside Gardens by letter dated 3/9/04. Wayside Gardens disputed the DHHS findings and requested an Informal Review.

DHHS conducted an Informal Review and affirmed its original findings. DHHS conveyed the results of the Informal Review by letter dated 1/24/05, received by Springbrook Nursing Facility on 11/2/05. By letter dated 11/9/05, Wayside Gardens requested an administrative hearing (exhibit # HO-5). This matter was referred to the Office of Administrative Hearings by the Order of Reference dated 11/21/05 (exhibit # HO-3). This issue at this hearing was stated in the Order of Reference:

- (1) Was the Department correct when it imposed a 10% financial sanction to Wayside Gardens Residential Care Facility as a result of the Case Mix Audit?

At the hearing, Wayside Gardens agreed with one of the DHHS findings, but disagreed with the DHHS findings on the remaining four. The disputed records are those of those four residents are designated herein as Resident #1, Resident #2, Resident #4 and Resident #6.

This hearing was scheduled to occur at 9:00 a.m. on 12/29/05. No one appeared at the hearing to represent DHHS. The Office of Administrative Hearings had sent copies of scheduling notices to Carole Kus and Maxima

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Corriveau, the persons designated on the Fair Hearing Report as the persons who would attend the hearing for DHHS. Beginning about 9:30 a.m. the Office of Administrative Hearings tried to reach Ms. Kus and Ms. Corriveau by telephone, without success. The Office of Administrative Hearings tried to reach a supervisor of Ms. Kus and Ms. Corriveau, without success. This hearing began at 9:50 a.m. with no one representing DHHS.

APPEARING ON BEHALF OF WAYSIDE GARDENS CENTER FOR HEALTH CARE:

Andrea Otis-Higgins, Director of Clinical Services, Sandy River Health System
Ed Fitzpatrick, Executive Director, Springbrook Nursing Facility
Paula Lowell, Director of Nursing, Springbrook Nursing Facility

APPEARING ON BEHALF OF AGENCY:

No one

ITEMS INTRODUCED INTO EVIDENCE:

Hearing Officer exhibits:

- HO-1. Letter scheduling hearing dated 11/21/05
- HO-2. Fair Hearing Report dated 11/17/05
- HO-3. Order of Reference dated 11/21/05
- HO-4. Letter dated 11/16/05 acknowledging hearing request
- HO-5. Letter requesting hearing dated 11/9/05

Wayside Gardens Center for Health Care exhibits:

- Tab 1. General Context Residential Care Appeal 12-29-05
- Tab 2. Resident #1
- Tab 3. Resident #2
- Tab 4. Resident #4
- Tab 5. Resident #6

Other items in the record:

- A. Documents attached to the Fair Hearing Report by DHHS

FINDINGS OF FACT:

- 1. Regarding Resident #1:

The 2/19/04 Case Mix Review Audit found that Resident #1's MDS-RCA dated 7/1/03 was not verifiable for the Behavioral Health Resource Utilization Group (RUG) based on a lack of documentation to support the coding of sections E1h and E1L on the MDS-RCA.

Wayside Gardens acknowledges that it had incorrectly coded sections E1h and E1L on the MDS-RCA.

Wayside Gardens' evidence presented at hearing shows that Resident #1 should have been coded with E1o ("withdrawal from activities of interest") and E1p ("reduced social interaction"). With this coding, Resident #1 was correctly included in the same case mix group as determined by Wayside Gardens based on this resident's 7/1/03 MDS-RCA.

2. Regarding Resident #2:

The 2/19/04 Case Mix Review Audit found that Resident #2's MDS-RCA dated 11/17/03 did not support placement in the Behavioral Health Resource Utilization Group (RUG) based on an inability to validate the coding of sections E1a, E1b, E1d, E1e, E1f, E1h, E1i, E1n and E1r on the MDS-RCA.

Wayside Gardens' evidence presented at hearing shows that Resident #2 was correctly coded in sections E1a, E1b, E1d, E1e, E1f, E1h, E1i, E1n and E1r on the MDS-RCA. In addition, Wayside Gardens' evidence presented at hearing shows that Resident #2 should have been coded with E1o ("withdrawal from activities of interest") and E1p ("reduced social interaction").

Resident #2 was correctly included in the same case mix group as determined by Wayside Gardens based on this resident's 11/17/03 MDS-RCA.

3. Regarding Resident #4:

The 2/19/04 Case Mix Review Audit found that Resident #4's MDS-RCA dated 10/10/03 was not verifiable for the Behavioral Health Resource Utilization Group (RUG) based on a lack of supporting documentation to validate the coding of sections E1d, E1L, E1n and E1q on the MDS-RCA.

Concerning the coding of sections E1d, E1L, E1n and E1q on the MDS-RCA, Wayside Gardens' evidence presented at hearing shows that Resident #4 was correctly coded in sections E1d and E1q, at least, on the MDS-RCA. In addition, Wayside Gardens' evidence presented at hearing shows that Resident #4 should have been coded with E1o ("withdrawal from activities of interest") and E1p ("reduced social interaction").

Resident #4 was correctly included in the same case mix group as determined by Wayside Gardens based on this resident's 10/10/03 MDS-RCA.

4. Regarding Resident #6:

The 2/19/04 Case Mix Review Audit found that Resident #6's MDS-RCA dated 11/3/03 was not verifiable for the Behavioral Health Resource Utilization Group (RUG) based on a lack of supporting documentation to validate the coding of sections E1h and E1n on the MDS-RCA.

Wayside Gardens' evidence presented at hearing shows that Resident #6 was correctly coded in sections E1h and E1n on the MDS-RCA. In addition, Wayside Gardens' evidence presented at hearing shows that Resident #6 should have been coded with E1o ("withdrawal from activities of interest") and E1p ("reduced social interaction").

Resident #6 was correctly included in the same case mix group as determined by Wayside Gardens based on this resident's 11/3/03 MDS-RCA.

RECOMMENDED DECISION:

The hearing officer recommends that the Acting Commissioner reverse the DHHS action and find that the Department was not correct when it imposed a 10% financial sanction to Wayside Gardens Residential Care Facility as a result of the Case Mix Audit.

REASONS FOR RECOMMENDATION:

The rules applicable to this case are contained in Chapter III, Section 97, of the MaineCare Benefits Manual – *Principles of Reimbursement Private Non-Medical Institution Services*. Under these rules, Residential Care Facilities (RCFs), also called PNMI, are reimbursed for MaineCare-eligible residents on the basis of a number of different criteria, including a “case mix adjusted price.”

RCFs are required to assess all their residents through the use of a “resident assessment instrument” called the “MDS-RCA” (Section 2040). Through this process, each resident is assigned to one of fifteen groups (Section 9020).

DHHS conducts “MDS-RCA assessment reviews” to ensure that RCF assessments accurately reflect residents’ clinical conditions. At an MDS-RCA assessment review, DHHS reviews a sample of the RCF’s MDS-RCA assessments for residents for whom the MaineCare Program is reimbursing the RCF (Section 7040).

As a result of its MDS-RCA assessment review, DHHS determines the RCF’s “assessment review error rate,” which is the percentage of “Unverified Case Mix Group Records” in the sample of cases reviewed by DHHS (Section 7040.12).

An “Unverified Case Mix Group Record” is a resident’s record that does not accurately represent the resident’s condition, and therefore results in the resident’s inaccurate classification into a case mix group that increases the case mix weight assigned to the resident (Section 7040.14). Section 7040.14 reads in part:

Unverified Case Mix Group Record is one which, for payment purposes, the Department has determined does not accurately represent the resident’s condition and, therefore, results in the resident’s inaccurate classification of the resident into a case mix group that increases the case mix weight assigned to the resident.

Depending on the magnitude of the “assessment review error rate,” DHHS must sanction the RCF by reducing MaineCare payments to the RCF. The reductions are 2% if the RCF’s error rate is 34% or greater but less than 37%, 5% if the RCF’s error rate is 37% or greater but less than 41%, 7% if the RCF’s error rate is 41% or greater but less than 45%, and 10% if the RCF’s error rate is 45% or greater (Section 7060.3).

In this case, Wayside Gardens disputed DHHS’s determination that its records for Residents #1, #2, #4 and #6 were Unverified Case Mix Group Records. DHHS, being the party asserting the truth of its claim, had the burden of persuasion in this matter. DHHS did not appear at the hearing to present evidence or argument regarding its claim and did not meet its burden. At the hearing Wayside Gardens presented sufficient evidence to show that it had placed each of these residents in his or her correct case mix group and that the correct case mix weight had been assigned to each of these residents. The hearing officer decided in favor of Wayside Gardens based on the preponderance of the evidence in the hearing record.

Accordingly, hearing officer recommended that the Acting Commissioner reverse the DHHS action and find that the Department was not correct when it imposed a 10% financial sanction to Wayside Gardens Residential Care Facility as a result of the Case Mix Audit.

MANUAL CITATIONS:

MaineCare Benefits Manual, Chapter III, Section 97

DATED: January 19, 2006 .

SIGNED: _____
Ronald S. Stoodley
Hearing Officer

RIGHT TO FILE RESPONSES OR EXCEPTIONS:

THE PARTIES MAY FILE WRITTEN RESPONSES AND EXCEPTIONS TO THE ABOVE RECOMMENDATIONS WITHIN 20 DAYS OF RECEIPT OF THIS RECOMMENDED DECISION. THIS TIME FRAME MAY BE ADJUSTED BY AGREEMENT OF THE PARTIES. RESPONSES AND EXCEPTIONS SHOULD BE FILED WITH THE OFFICE OF ADMINISTRATIVE HEARINGS STATE HOUSE STATION # 11, AUGUSTA, MAINE 04333-0011. THE COMMISSIONER WILL MAKE THE FINAL DECISION IN THIS MATTER.

cc: Andrea Otis-Higgins, Director of Clinical Services, Sandy River Health System
Ed Fitzpatrick, Executive Director, Springbrook
Carole Kus, OMS
Maxima Corriveau, OMS